

TAKEUCHI et al
Serial No. 09/440,137
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REMARKS

Claims 29-35 are pending in this application.

The Action states claim 27 would be allowable if written in independent form, and with this information in mind the claims have been amended. The relationship between the previous claims and the new claims is explained below.

In the Action claims 23-25 were rejected as anticipated by newly cited U.S. 5,681,608 to Cain while claims 26 and 28 were rejected as being "obvious" hence unpatentable over the same reference. Applicants submit the new claims define subject matter patentably distinct from the disclosure of Cain.

Correspondence between previous claims and new claims is as follows:

| <u>Previous Claim</u> | <u>New Claim</u> | <u>Action</u> |
|-----------------------|------------------|---------------|
| 23 | -- | deleted |
| 24, 25 | 30, 31 | |
| 26 | 29 | |
| 27 | 32 | |
| 28 | 35 | |
| | 33, 34 | added |

As indicated above, claim 23 was deleted, and claims 24 and 25 were converted to new claims 30 and 31, respectively, which are dependent from new claim 29. Also present in composition of claim 29 as an emulsifier is at least one sucrose fatty acid ester, polyglycerol fatty acid ester, succinic acid monoglyceride, sorbitol fatty acid ester and/or sorbitan fatty acid ester, the emulsifier providing enhanced antifoaming properties. Therefore, there are no claims which were the subject of Article 102 (b) rejection, thus this rejection is believed to be obviated.

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Claims 26 and 28, which were the subject of a 35 U.S.C. §103(a) rejection, correspond to new claims 29 and 35, respectively. Diglycerides, monoglycerides and vitamin E, which the Examiner mentioned as involved in the determination of obviousness, are not included in the new claims 29 and 35. Therefore, the rejection under 35 U.S.C. §103(a) is also believed to be obviated.

Additionally, the composition of new claim 29 is patentable as it displays, based on its constitution, remarkable effects of ① low body fat accumulation and ② good stability at low temperatures (page 6, line 18 to page 7, line 16), and further, based on the new constituent added by amendment, ③ improved antifoaming properties (page 11, line 29 to page 12, line 10). These effects are unexpected and remarkable effects which are not described in or suggested by Cain at all. Therefore, also from this point of view, the rejection under 35 U.S.C. §103(a) should be withdrawn.

Claim 27 was converted to an independent claim (new claim 32) where necessary limitations pointed out by the Examiner are incorporated.

That the new set of claims are clear of the rejections made by the Examiner.

For the above reasons, it is submitted the claims of the application define inventive subject matter. Reconsideration and allowance are solicited.

Respectfully submitted,

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